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1-2017

# Who's wrong, whose liability

Singapore Management University

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### Citation

Singapore Management University. Who's wrong, whose liability. (2017). *Research@SMU: Connecting the dots*. 102-103.  
Research@SMU: Connecting the Dots.

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# Who's wrong, whose liability

Determining who is legally answerable for a wrong in the civil context can be complicated, but research being done by Professor Lee Pey Woan is helping to clear the air.

It seemed like a straightforward request: Your friend, whom you know to be a little short on cash, asked to borrow your car over the weekend. There was just one hitch – he used it to rob a bank, and you find yourself next to him in the dock.

Under criminal law, the verdict is clear: If you lent your car knowing that he intended to rob a bank you have become an accessory to a crime, even though you might not have robbed the bank yourself. But do you then also owe the bank compensation under civil law even though you did not directly cause them harm?

These are just some of the issues that Professor Lee Pey Woan wrestles with in the course of research at the intersection of civil and corporate law. A faculty member at the SMU School of Law, Professor Lee co-authored a textbook of corporate law in 2015 and also contributed chapters to textbooks in tort and contract law.

In a 2015 piece, titled 'Accessory Liability in Tort and Equity' and published in the *Singapore Academy of Law Journal*, she examines the general principles for making accessories liable and argues that we should not simply transfer what works for criminal law into the civil context.

"My conclusion is that the principles used should be narrow in nature. It should not be too easy for us to say that somebody is responsible for helping another commit a civil wrong because, unlike in criminal law, wrongdoing in civil law are more wide-ranging and may often be less serious," Professor Lee explains.

## DISTINGUISHING BETWEEN CRIMES AND TORTS

Crimes are serious wrongdoing that attract the punishment of the State. A tort, on the other hand, is typically understood as a wrong done by one person to another that necessitates compensation; for example, injuring a pedestrian while driving under the speed limit. Certain actions – injuring a pedestrian while speeding, for one – can qualify as both a crime and a tort.

This distinction is important when it comes to determining accessory liability, Professor Lee stresses. She gives the example of how the owner of a paint shop should not be considered liable if he or she sells paint to someone who subsequently vandalises a wall, as the seller should not have the burden of monitoring what all his or her customers do.

One particularly interesting application of Professor Lee's research on accessory liability in the civil context lies in the field of intellectual property rights infringement, specifically websites which make it easier for users to download movies illegally.

While the end users who download such movies have clearly infringed the copyright, movie companies find it hard to trace and pursue the large number of individuals involved. Instead, the copyright owners have found it easier to go after the service providers, who also have greater financial resources to compensate them.

"The question raised is whether such websites are liable as an accessory for helping others to

contravene the copyright of the movie companies,” she notes.

“In a case heard at the English High Court, the judges ruled that the highly customised service and very detailed instructions – including advice on discussion forums encouraging users to upload infringing materials to share with others – that were provided by a website called Newzbin showed that there was a clear intention to commit illegal activities.”

### CAN A COMPANY BE AN ACCESSORY?

As an extension of her interest in the intersection between corporate and civil law, Professor Lee has also investigated the legal implications of accessory liability in cases where the accessory is a company rather than an individual.

“In such cases, we have to ask questions like who is the company. Whose knowledge is relevant for making the company liable? It is not a straightforward application of the normal two human agent situation. When you transpose the principles to a company, you face a different set of problems,” she remarks.

The situation is further complicated by the fact that a company is not always a monolithic entity with one set of unified interests but is in fact a composite entity made up of stakeholders with diverse interests, she adds.

“Thus, if a director uses the company to defraud others, it may not always be fair to impose liability on the company as a conspirator because the liability is ultimately borne by the shareholders or creditors of the company who are entirely innocent. That is why the law generally guards the company’s separate status as a distinct legal entity jealously, and is very reluctant to equate a company with the people who own and manage it.”

These aspects of Professor Lee’s research have been published in the *Singapore Academy of Law Journal* and the *International Company and Commercial Law Review* as articles titled ‘The Company and its Directors as Co-Conspirators’ (in 2009) and ‘The Enigma of Veil-Piercing’ (in 2015), respectively.

### SEEKING COLLABORATORS

In the near future, Professor Lee intends to further her research by examining whether the company act should be decriminalised and if civil penalties could be used as a more effective deterrent instead.

“This is an area with potential for collaborating with people from the other schools at SMU, as we are looking at the optimal balance of penalties, which is not a purely legal question,” she elaborates.

By collaborating with colleagues from diverse research backgrounds, such as researchers at the School of Social Sciences and the Lee Kong Chian School of Business, she is looking to better understand from both psychological and business perspectives how users would respond to different penalty systems. ■